

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CRM-A-2668-MA-2018 (O&M)

Date of decision : 22.11.2019

Palwinder Singh

...Applicant/appellant

Versus

Manjit Singh @ Billa and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Sudhir Paruthi, Advocate for the applicant/appellant.

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**ANIL KSHETARPAL, J. (ORAL)**

Special Leave to appeal has been sought against the judgment of acquittal passed by the learned Chief Judicial Magistrate, Jalandhar. Relevant findings arrived at by the Magistrate are extracted as under:-

*“18. The first thing to be proved by the complainant in the present case is his exclusive possession over the property, which is alleged to have been trespassed by the accused. The complaint has been filed by Palwinder Singh, who is not owner of the property and he has filed the complaint on behalf of his uncle Balwinder Singh son of Jagat Singh, who is stated to be Non Resident Indian and owner of the property. Palwinder Singh has attached the copy of power of attorney given by his uncle in his favour as Ex.C1. A careful perusal of this attorney shows that it has been executed on 19.01.2007 i.e. about 4 years prior to filing of present complaint. Balwinder Singh has not stepped into witness box himself to depose against the accused and this power of*

*attorney cannot be relied upon to pursue the present case because the present case is a criminal case and it requires special power of attorney to be executed on behalf of the aggrieved and general power of attorney cannot be relied upon in the absence of testimony of the complainant.*

19. *Secondly, even if the testimony of Palwinder Singh is considered, he has deposed about the alleged trespass by accused over the property of his uncle, but he has neither placed on record the jamabandi of the property or site plan of the property, and it remained unproved that which property has been trespassed by the accused. Although, the complainant has relied upon judgment Ex.C2 and property in dispute in the said judgment has been mentioned as “khasra No.203 measuring 1 kanal”. In Para No.1 of this judgment dated 26.03.2011, it has been mentioned that Balwinder Singh is having 2/5th share in this khasra number but he shifted his house to another khasra numbers which are 195 and 198, which clearly implies that Balwinder Singh himself admitted that he was not in possession of khasra No.203 at that time. Moreover, the accused, who are facing trial in the present case are not defendants in the said case and simple decree for permanent injunction has been passed in favour of Balwinder Singh vide which Dilbagh Singh and Surinder Singh had been restrained from interfering into the peaceful possession of the plaintiff.*

20. *Thirdly, CW1 Palwinder Singh has mentioned the area of the property as 4 marlas in his complaint, but during his cross examination he stated that the property is 8 marlas, which creates doubt about description of the property. During his further cross examination he stated that he saw the entire occurrence with his own eyes and it took place at about 8:00 PM to 9:00 PM. But CW2 Surinder Singh and CW3 Harwinder Singh in their preliminary*

*evidence recorded on 10.10.2012 stated that “on 08.04.2011 at about 8:00 PM, I went to my room to have some Toori there from. At that time, I saw one Manjeet Singh @ Billa and his brother Paramjit Singh @ Pamma sons of Pritam Singh along with their 8-10 associates were removing Toori from the aforesaid room forcibly and illegally, and dishonestly loaded it in a trolley and took away the same. The said accused got removed Toori in Trolley to some other place”. He never stated that accused took away the agriculture equipments belonging to the complainant nor he said anything about the occurrence dated 23.06.2011. No satisfactory reason has been given by the complainant for non examination of these witnesses in pre-charge as well as in post-charge evidence.*

*21. Fourthly, the accused has relied upon the judgment Ex.D1 dated 31.05.2017 passed by the court of Ms. Chandna Bhatti, Judicial Magistrate Ist Class, Jalandhar wherein the civil suit for declaration relating to sale deed No.5828 dated 04.10.2010 relating to property in dispute has been dismissed. This civil suit had been filed by Balwinder Singh and if the property had been sold by some third person then it cannot be presumed that he is owner of the property in dispute.*

*22. Lastly, cross examination of CW1 is full of improvements as he stated that accused were installing taps in the property in dispute on 23.06.2011, which has not been mentioned in any of the complaint given to police or in complaint filed in this court. The other eye witness Surinder Singh did not appear in the court to face the cross examination and his examination in chief cannot be read into evidence. The other witnesses examined by the complainant simply proved the record of Police Station where the complaints were filed on behalf of the*

*complainant. The evidence produced on record by the complainant is neither material nor sufficient to base the conviction of the accused. So, the point of determination stands decided in favour of accused and giving the benefit of doubt, accused Manjit Singh and Paramjit Singh are hereby acquitted from the charges framed against them. Their bail bonds and surety bonds stand discharged. File be consigned to the judicial record room Jalandhar.”*

As noticed above, learned Magistrate has given as many as five reasons to hold that the respondents are entitled to 'benefit of doubt' and the prosecution has failed to prove its case beyond shadow of reasonable doubt.

Learned counsel for the applicant/appellant although made sincere attempt, however, failed to draw attention of the Court to any substantive error or perversity in the judgment passed.

Hence, no ground to grant special leave to appeal is made out.

Dismissed.

**22.11.2019**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                  Yes/No**